IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 269 OF 2006

Smt.Vrindavati Tukaram Bhere .. Petitioner

versus

Smt.Asha Anand Dabholkar & ors. .. Respondents

...

Mr.S.S. Jinsiwala with Mr.S.V. Masurkar for the petitioner.

Mr.U.P. Warunjikar for respondent nos.1 to 3.

CORAM : D.G. KARNIK, J

DATED : 17th October 2006

P.C.:

1. This Contempt Petition is filed by the petitioner (who is the tenant -purchaser) of agricultural land) alleging that respondent nos.1 to 3 have committed breach of the common order dated 30th July 2004 passed in Writ Petition no.5296 of 1999 and Writ Petition no.1649.

2. Respondent nos.1 to 3 were the original owners of the agricultural lands. Respondent became the statutory purchasers of the lands in question. There was some understanding between the parties regarding the entitlement to the fruits of the mango trees standing in the lands. According to respondent nos.1 to 3 they were entitled to the fruits borne by the mango trees under the compromise. They therefore filed a suit in the civil court for injunction restraining the petitioner from preventing them from plucking the mango fruits from the mango trees in the land. The injunction was refused and on appeal the order of refusal was confirmed by the District Court. That order was challenged by respondent nos.1 to 3 by filing of a Writ Petition. In the mean while, there were proceedings before the tenancy authorities regarding the ownership of the mango trees and the right to the mango fruits. The tenancy authorities held in favour of the respondent nos.1 to 3. That order was challenged by the petitioner by filing a writ petition. By the order dated 30th July 2004, this Court allowed the petition filed by the petitioner and dismissed the petition filed by the respondents 1 to 3. It held that

inspite of the agreement between the petitioner and the respondents 1 to 3, the petitioner had become the owner of the mango trees by statutory provision and therefore, he was entitled to the mango fruits.

3. According to the petitioner, despite this decision by this court, the respondent nos.1 to 3 are preventing the petitioner from enjoying the fruits of the mango trees and thereby they are committing breach of the order passed by this court.

4. It may be noted that the proceedings before this court arose out of the suit for injunction filed by the respondents 1 to 3 for injunction. The courts below rejected the injunction and this court confirmed the order of refusal of injunction interalia on the ground that the ownership of the trees had also passed to the petitioner. This court did not grant any injunction in favour of the petitioner. In fact, the petitioner had not filed any suit for injunction restraining the respondents from disturbing her possession and the right of enjoyment of the mango fruits. There was no operative order of injunction passed against the respondents by this court. The decision of this court may, at the most, give right to

the petitioner tenant to sue the respondents for a relief of injunction and obtain a relief of injunction. It would also be open to the petitioner to sue the respondents for damages for wrongfully enjoying the mango fruits so far. But in any even it cannot be said that the respondents have committed breach of any order of the court as there is no order of injunction against the respondents. In the circumstances, it cannot be said that the respondents have committed deliberate and wilful breach of the order of this court.

5. Learned counsel for the petitioner referred to and relied upon the decision of the Supreme Court in Anil Ratan Sarkar Vs. Hirak Ghosh reported in 2002 Cr.L.J. 1814. In the said decision it was held that wilful disregard of the order of the court is a contempt. As I have already held that there is no order of injunction against the respondents and the respondents have not committed any breach or disregarded any order of this court. In the circumstances, the case cited by the counsel for the respondent has no application.

6. For these reasons, there is no merit in the contempt petition which is hereby dismissed.

(D.G. KARNIK, J)